IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5715 OF 2006

Rajdeep Haibatrao Surve ...Petitioner

vs.

Vishwanath Vishnu Kulkarni ...Respondent

Mr.Amit Borkar for the Petitioner
Mr.Shriram S. Kulkarni for the Respondent.

CORAM: A.S.OKA,J.
DATE : APRIL 9,2007.

P.C.:

1. The submissions of the Advocates for the parties were heard on the last date. The Petitioner is the original Defendant in a suit for specific performance filed by the respondent-Plaintiff. The Trial Court passed a decree in favour of the Respondent-Plaintiff. Clause 2 of the operative part of the decree reads thus :

> "2. The Defendant shall execute the sale deed of the suit property i.e. 4000 sq.ft. area out of Revision Survey No.925-A described in para No.1 of the plaint in favour of the Plaintiff. The Defendant is directed to obtain necessary permission from the competent authority i.e. the authority under Urban Ceiling Act and Revenue Authority within the period of three months from the date of this order. The defendant is further directed to execute the sale deed of the suit property in favour of the Plaintiff and shall deliver

the suit property in possession of the Plaintiff within the period of one month from the receipt of necessary permission to effect sale deed."

2. The said decree was put to execution by the Respondent by filing an execution application. By order dated 17th June 2006, the Executing Court held that now it shall be lawful to transfer the land in accordance with the decree and the Application filed by the Respondent was allowed.

3. It appears that a notice in prescribed form under section 26(1) of the Urban Land (Ceiling and Regulation) Act,1976 was submitted to the Competent Authority under the said Act of 1976. The said notice was received by the office of the Competent Authority on 30th November 2005. An application was made by the Respondent by pointing out that since no steps have been taken by the Competent Authority on the basis of the said notice within the stipulated statuary period of two months, now the sale deed can be executed in terms of the decree. The Petitioner has relied upon the communication dated 14th February 2006 issued by the Competent Authority addressed to him by which the Competent Authority declined to grant permission to sell the suit property.

4. The learned Advocate for the Petitioner submitted that an Application was made before the Competent Authority on 10th February 2006 for seeking permission to sell the property and

the said application has been rejected on 14th February 2006. He submitted that the said order dated 14th February 2006 has become final and unless the said order is challenged and set aside, the sale deed cannot be executed. He submitted that even assuming that the said order is void, unless and until it is set aside, the sale deed cannot be executed. He placed reliance on the decision of the Apex Court in case of M. Meenakshi and others Vs. Metadin Agarwal and others [(2006) 7 S.C.C. page 470]. The learned Advocate for the Petitioner also submitted that considering the operative part of the decree, unless the condition in the decree for obtaining sale permission is complied with, the sale deed cannot be executed. He, therefore, submitted that the impugned order is illegal and the sale deed cannot be executed. The learned Counsel for the Respondent supported the impugned Judgment and Order.

5. I have considered the submissions. Sub sections 1 and 2 of section 26 of the said Act of 1976 read thus :

(1) Notwithstanding anything contained in any other law for the time being in force, no person holding vacant land within the ceiling limit shall transfer such land by way of sale, mortgage, gift, lease or otherwise except after giving notice in writing of the intended transfer to the competent authority.

(2) Where a notice given under sub-section (1) is for the

transfer of the land by way of sale, the competent authority shall have the first option to purchase such land on behalf of the State Government at a price calculated in accordance with the provisions of the Land Acquisition Act,1894 or of any other corresponding law for the time being in force and if such option is not exercised within a period of sixty days from the date of receipt of notice, it shall be presumed that the competent authority has no intention to purchase such land on behalf of the State Government and it shall be lawful for such person to transfer the land to whomsoever he may like:

. Provided that where the competent authority exercises within the period aforesaid the option to purchase such land the execution of the sale deed shall be completed and the payment of the purchase price thereof shall be made within a period of three months from the date on which such option is exercised.

6. Under the impugned decree for specific performance, a direction was issued against the Petitioner to obtain permission of the Competent Authority under the said Act of 1976. The submission of the learned Advocate for the Petitioner is that the permission was applied for and the same

has been refused. Under the provisions of the said Act of 1976 and in particular section 26 thereof, the requirement of law is that a notice has to be served to the Competent Authority of the intending transfer of a vacant land. Sub section 1 of section 26 provides that no person holding vacant land within the ceiling limit shall transfer such land by way of sale, mortgage, gift or lease without giving a notice as provided under sub section 1 of section 26 the said Act of 1976. Sub section 2 provides that after notice under sub section 1 is served, the Competent Authority thereafter has an option to purchase the vacant land on behalf of the State Government. Sub section 2 further provides that if such option is not exercised within a period of sixty days from the date of the receipt of the notice, it shall be presumed that the Competent Authority has no intention to purchase the said land on behalf of the State Government and it shall be lawful for such person to transfer the land to whomsoever he may like. This is the only precondition prescribed by the said Act of 1976 for transfer the vacant land.

7. Therefore, the reference in the operative part of the decree to the requirement of obtaining a permission under the said Act of 1976 is obviously to the embargo created by sub section 1 of the section 26 of the said Act of 1976. Apart from section 26 of the said Act of 1976, there is no other statutory restriction under the said Act of 1976 on

transferring a vacant land. The purport of the direction in the decree is that the sale deed shall not be executed unless the requirements of the said Act of 1976 are complied with. In the present case, the requirement is complied with. Therefore, there is no merit in the submission made by the Advocate for the Petitioner in that behalf.

8. Reliance placed on order dated 14th February 2006 will not help Petitioner as the said order appears to have been issued by the Competent Authority on an Application for grant of permission for sale of the property. There was no occasion for the Petitioner to apply for the sale permission before the Competent Authority and what was required to be done was as required by sub section 1 of section of section 26 of the said Act of 1976.

9. It is not in dispute that notice under sub section 1 of section 26 of the said Act of 1976 was submitted to the office of Competent Authority on 30th November 2005 and within the statutory period of 60 days, the Competent Authority has not exercised the option under sub section 2 of section 26 of the said Act of 1976. Therefore, it became lawful to effect the transfer of the suit property by execution of the sale deed.

10. Reliance placed by the learned Advocate for the Petitioner on the decision of M.Meenakshi and others (supra)

will not help the Petitioner. Perusal of the paragraph 14 of the decision of the Apex Court shows that in the case before the Apex Court, the Competent Authority under the said Act of 1976 came to the conclusion that no vacant land admeasuring 1000 sq. meters was available for transfer to the third parties. The Apex Court has clarified the position in paragraph 25 of the said decision which reads thus :

"25. It was, therefore, not a case where a notice under Section 26 of 1976 Act could have served the purpose and in the event, the competent authority did not exercise its statutory right of perception (sic purchase) within the period stipulated thereunder, the defendant was free to execute a deed of sale in favour of any person he liked."

11. Therefore, the Apex Court was dealing with the case where notice under section 26 of the said Act of 1976 could not have been served as the vacant land was not available for effecting transfer. In fact the Apex Court has held that no purpose will be served by issuing a notice under section 26 of the said Act of 1976. Hence, there is no merit in the submission of the learned Advocate for the Petitioner.

12. There is no merit in the Writ Petition and the same is rejected.

JUDGE